

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

SAMUEL LEE COLE

PLAINTIFF

v.

No. 1:05CV303-M-D

XLIBRIS, et al

DEFENDANTS

ORDER ON MOTIONS AND APPEALS

This *pro se* plaintiff has filed multiple motions and appeals that lack any arguable merit. The motions are not consistent with any attempt to comply with any rules of procedure. The court also has before it the motions of the defendant, Xlibris Corporation and Ingram Book Group, Inc., to strike the plaintiff's motion for sanctions and the motion of Amazon.Com to set aside the entry of default. The pending motions and appeals are individually addressed below:

1. The plaintiff moved for and obtained an entry of default against Amazon.Com. He has now moved for a default judgment against Amazon.Com (16). Amazon.Com has moved to vacate the entry of default (25). Plaintiff, instead of filing a response to Amazon.Com's motion has filed a "Motion Protesting Vacation of Clerk's Default Entry (32). Amazon.Com has submitted an affidavit denying that it ever received the summons and complaint. Regardless, the return is not valid. The "Legal Dept." is not the registered agent for service of process or otherwise designated to receive process. The entry of default is vacated. Amazon.Com is granted to and including March 15, 2006 in which to file its answer or other response to the complaint.

2. The plaintiff has filed an appeal from the order of the magistrate judge denying the appointment of counsel(17). Finding no abuse of discretion, the appeal is denied.

3. The plaintiff has filed an appeal from the order of the magistrate judge's order granting an extension of time to Xlibris and Ingram to file their response to the complaint(18). Given the standard for review of a magistrate judge's decision, the appeal is denied as frivolous.

4. The plaintiff has filed for a default judgment against Xlibris Corporation and Ingram Book Group (21). These defendants, within the time allowed by the orders of this court, filed a motion for a more definite statement. They are not in default. This motion is lacking in any arguable basis in law or in fact in violation of Rule 11 of the Federal Rules of Civil Procedure. Plaintiff is warned that his status as a pro se litigant does not excuse him from compliance with all of the rules of procedure and that he is subject to sanctions up to and including dismissal of his action with prejudice if he continues to exhibit the utter disregard for the rules of procedure. This motion is denied.

5. The plaintiff has filed a "Motion for damages and relief" (22). This is another motion for default judgment against all defendants. It is denied.

6. The plaintiff has filed a motion protesting the motion for more definite statement and the magistrate's order granting the motion(26). This will be treated as an appeal of the order. There being no abuse of discretion in the entry of this order, the appeal is denied.

7. The plaintiff has filed a "Motion of protest non-default judgment." (27). The motion filed four days after the motion for default judgment against Xlibris and Ingram Book Group accuses the court of stalling and delay for not having already entered the default judgment. The motion is legally and factually frivolous. The language used is hostile, utterly inappropriate and disrespectful to the court and will not be tolerated in the future. The motion is denied.

8. The plaintiff's motion for disclosure (29) is a motion for discovery. There being no good cause shown for the allowance of discovery prior to the Case Management Conference, the motion is denied.

9. The plaintiff has filed a motion protesting the 16.1(A) Initial order(30). This is a routine order entered in every general civil case set forth the procedures to be followed preparatory to the case management conference. The plaintiff's protest, treated as an appeal, is denied. He is required to comply with this order, or face possible sanctions. The motion again requests appointment of counsel. It is denied.

10. The plaintiff has filed a motion for sanctions (31) to which the defendants, Xlibris and Ingram Book Company has responded by filing a motion to strike (33). The plaintiff has filed not a response but a motion to protest the motion to strike (36). The motion to strike is granted. The motion for sanctions and the motion to protest are to be terminated from the docket of the court.

11. The plaintiff has file additional motions for contempt (34, 37) and for sanctions. These motion are denied as frivolous.

12. The plaintiff has moved for additional time (28), apparently to respond to the order requiring a more definite statement, pending discovery and reconsideration of the order denying appointment of counsel. The plaintiff is granted twenty days from the date of this order in which to provide his more definite statement, based on his knowledge, in accordance with the order of January 20, 2006. The plaintiff shall file no further motions of any kind pending his compliance with the order requiring a more definite statements. Should the plaintiff attempt to file motions in violation of this order, the motions will not be filed, acknowledged or acted on at any time.

IT IS ORDERED as follows:

1. Plaintiff's motions (16, 21, 22, 27, 29, 32, 34, 35, and 37) are denied.
2. Defendant Amazon.Com's motion to vacate the clerk's entry of default (25) is granted.

The defendant shall answer or otherwise respond to the complaint on or before May 1, 2006.

3. The motion to strike (33) filed by Xlibris and Ingram Book Company is granted. The plaintiff's motion (31) and 'protest' (36) are stricken.

4. The plaintiff's appeals (17, 18, 30) are denied. Docket number 26 which is docketed as a motion, but is construed to be an appeal is denied.

SO ORDERED this the 12th day of April, 2006.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE